

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM HACKNEY and	)	No. C 06-6860 CW (PR)
VINCE WILLIAMS,	)	
	)	
Plaintiffs,	)	ORDER OF DISMISSAL
	)	
v.	)	
	)	(Docket nos. 4, 5)
ANISH M. PATEL, et al.,	)	
	)	
Defendants.	)	

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INTRODUCTION

Plaintiffs William Hackney and Vince Williams are prisoners of the State of California who are incarcerated at the California Medical Facility in Vacaville, California. They have filed a joint pro se civil rights complaint under 42 U.S.C. § 1983 against Judge Marilyn Patel and several other private Defendants,<sup>1</sup> and they seek in forma pauperis status.

STANDARD OF REVIEW

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2).

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<sup>1</sup> The other named Defendants are as follows: Anish M. Patel, Raj M. Patel and "Mr. Patel Sr.," alleged owners of Star Inn Co.; "Judge" Jagdish Patel; "Executive Officer" Jody Patel; Fidelity National Title Co.; Hanmi Bank; Citibank West; Nikki's Bails Bondsmen; and Attorney Robert Shapiro.

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
2 allege two essential elements: (1) that a right secured by the  
3 Constitution or laws of the United States was violated, and  
4 (2) that the alleged violation was committed by a person acting  
5 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
6 (1988).

7 Dismissal for failure to state a claim is warranted if the  
8 plaintiff is unable to articulate "enough facts to state a claim to  
9 relief that is plausible on its face." Bell Atlantic Corp. v.  
10 Twombly, 127 S. Ct. 1955, 1973 (2007). Pro se pleadings must be  
11 liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d  
12 696, 699 (9th Cir. 1988). A claim that is totally incomprehensible  
13 may be dismissed as frivolous as it is without an arguable basis in  
14 law. See Jackson v. Arizona, 885 F.2d 639, 641 (9th Cir. 1989).

#### 15 DISCUSSION

##### 16 I. Violation of United States Constitution or Statute

17 Plaintiffs allege that Defendants defrauded them of "millions  
18 of dollars" in assets, including but not limited to: various hotel  
19 and motel properties, luxury automobiles and one houseboat.  
20 However, they fail to allege any constitutional or statutory  
21 violations, an essential element for a § 1983 claim. Therefore, the  
22 Court finds that their claims against all named Defendants are  
23 frivolous and without arguable basis in law.

24 A claim is frivolous if it is premised on an indisputably  
25 meritless legal theory or is clearly lacking any factual basis. See  
26 Neitzke v. Williams, 490 U.S. 319, 327 (1989). Although a complaint  
27 is not "frivolous" within the meaning of sections 1915A and  
28

1 1915(e)(2) because it fails to state a claim under Federal Rule of  
2 Civil Procedure 12(b)(6), failure to state a claim is a separate  
3 basis for dismissal under sections 1915A and 1915(e)(2). See id. at  
4 331.

5 Sections 1915A and 1915(e)(2) accord judges the unusual power  
6 to pierce the veil of the complaint's factual allegations and  
7 dismiss as frivolous those claims whose factual contentions are  
8 clearly baseless. See Denton v. Hernandez, 504 U.S. 25, 32 (1992).  
9 To pierce the veil of the complaint's factual allegations means that  
10 a court is not bound, as it usually is when making a determination  
11 based solely on the pleadings, to accept without question the truth  
12 of the plaintiff's allegations. See Denton, 504 U.S. at 32. But,  
13 this initial assessment of the plaintiff's factual allegations must  
14 be weighted in favor of the plaintiff. See id. A frivolousness  
15 determination cannot serve as a factfinding process for the  
16 resolution of disputed facts. See id. A finding of factual  
17 frivolousness is appropriate when the facts alleged rise to the  
18 level of the irrational or the wholly incredible, whether or not  
19 there are judicially noticeable facts available to contradict them.  
20 See id. at 32-33. But the complaint may not be dismissed simply  
21 because the court finds the plaintiff's allegations unlikely or  
22 improbable. See id. at 33.

23 Here, even applying the liberal-interpretation standard  
24 afforded to pro se litigants, the Court finds that Plaintiffs'  
25 allegations are presented in a conclusory manner, with no factual  
26 support given to substantiate the allegations, and that the claims  
27 are legally and factually frivolous within the meaning of 28 U.S.C.  
28 § 1915(d) and Nietzke, 490 U.S. at 327. Although the Court

1 generally grants leave to amend, the Court concludes that here,  
2 leave would serve no purpose. Accordingly, the instant complaint is  
3 DISMISSED with prejudice.

4 II. Color of Law

5 Plaintiffs' claims also fail to satisfy the second element of a  
6 § 1983 claim because they allege no action taken under color of  
7 state law. See West, 487 U.S. at 49 (A person acts under color of  
8 state law if he "exercise[s] power possessed by virtue of state law  
9 and made possible only because the wrongdoer is clothed with the  
10 authority of state law.") (citation and internal quotation marks  
11 omitted).

12 A. Claims Against Judge Marilyn Patel

13 Judge Marilyn Patel is absolutely immune from civil liability  
14 for acts performed in her judicial capacity. See Moore v. Brewster,  
15 96 F.3d 1240, 1243 (9th Cir. 1996). If a federal judge violates a  
16 litigant's constitutional rights in a proceeding pending in federal  
17 court, Congress has provided carefully structured procedures for  
18 taking appeals and for petitioning for extraordinary writs in Title  
19 28 of the United States Code. See id. Here, Plaintiffs have not  
20 alleged civil liability for acts performed by Defendant Judge  
21 Marilyn Patel in her judicial capacity. To the extent that  
22 Plaintiffs attempt to state claims against Defendant Judge Marilyn  
23 Patel for acts performed in her private capacity, their claims  
24 fail. A private individual does not act under color of state law,  
25 an essential element of a § 1983 action. See Gomez v. Toledo, 446  
26 U.S. 635, 640 (1980). Purely private conduct, no matter how  
27 wrongful, is not covered under § 1983. See Ouzts v. Maryland Nat'l  
28 Ins. Co., 505 F.2d 547, 559 (9th Cir. 1974). Therefore,

1 Plaintiffs' claims against Defendant Judge Marilyn Patel are  
2 DISMISSED with prejudice for this reason as well.

3 B. Claims Against Attorney Robert Shapiro

4 Plaintiffs have sued an attorney in private practice.  
5 Attorneys in private practice are not state actors. See Simmons v.  
6 Sacramento County Superior Court, 318 F.3d 1156, 1161 (9th Cir.  
7 2003); see also Kimes v. Stone, 84 F.3d 1121, 1126 (9th Cir. 1996)  
8 (attorneys are private actors). Services performed by a private  
9 attorney in connection with a lawsuit do not constitute action  
10 under color of state law. See Franklin v. Oregon, 662 F.2d 1337,  
11 1345 (9th Cir. 1981); Briley v. California, 564 F.2d 849, 855-56  
12 (9th Cir. 1977). And claims for legal malpractice do not come  
13 within the jurisdiction of the federal courts. See Franklin, 662  
14 F.2d at 1345. Therefore, Plaintiffs' claims against Defendant  
15 Shapiro are DISMISSED with prejudice for this reason as well.

16 C. Claims Against Private Citizens and Companies

17 Plaintiffs' claims against the remaining Defendants involve  
18 purely private conduct by private citizens or companies;<sup>2</sup>  
19 therefore, the Court finds that they do not meet the standards for  
20 cognizable claims under § 1983. See Gomez, 446 U.S. at 640;  
21 Outzts, 505 F.2d at 559. All claims against the remaining  
22 Defendants are DISMISSED with prejudice for this reason as well.

23 CONCLUSION

24 For the foregoing reasons, Plaintiffs' complaint is hereby  
25 DISMISSED with prejudice. Plaintiffs' motions to proceed in forma

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27 <sup>2</sup> Plaintiffs list one of the named Defendants as "Judge"  
28 Jagdish Patel. However, the Court cannot verify that Jagdish Patel  
is a judge; therefore, it will construe Plaintiffs' claim as a  
claim against a private individual.

1 pauperis (docket nos. 4, 5) and all other pending motions are  
2 TERMINATED. No filing fee is due.

3 IT IS SO ORDERED.

4  
5 DATED: 6/12/07

  
6 CLAUDIA WILKEN  
7 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM HACKNEY et al,

Plaintiff,

v.

ANISH M. PATEL et al,

Defendant.

Case Number: CV06-06860 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 12, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Vince Williams F23355  
CMF-G3-335  
P O Box 2000  
Vacaville, CA 95696-2000

William Hackney F23313  
CMF-G3-335  
P.O. Box 2000  
Vacaville, CA 95696-2000

Dated: June 12, 2007

Richard W. Wicking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California